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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,528	07/16/2001	Fumino Okamoto	009683-379	2297

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EXAMINER

STERRETT, JONATHAN G

ART UNIT

PAPER NUMBER

3623

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,528

Applicant(s)

OKAMOTO ET AL.

Examiner

Jonathan G. Sterrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9-19-2001.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

hlc

DETAILED ACTION

Summary

1. **Claims 1-36** are pending in the application.

Specification

2. The disclosure is objected to under 37 CFR 1.71, as being so incomprehensible as to preclude a reasonable search of the prior art by the examiner. For example, the following items are not understood:

Page 3 line 18-19, **"this can alleviate an operation entering information of the attribute of the customer"**. Does the applicant mean to eliminate, i.e. to remove, or to alleviate, i.e. make less or lessen?

Page 6 line 32-33, **'the information and the attribute being correlated with each other'** (Does the applicant mean 'linked' or 'associated' – the use of the term correlation here and in the claims implies the statistical use of correlation, the examiner is not sure what is being indicated here).

Page 7 line 17, **'extracted information is used to determine an attribute of a customer (a non-purchaser)'**. The use of the word 'customer' here in combination with 'non-purchaser' is confusing because a 'customer' implies that a person is obtaining a good or a service. The use of the term 'shopper' or 'store visitor' or even 'potential customer' would be clearer.

Page 9 line 25-27, **'the step of obtaining an attribute includes determining from the information extracted the attribute of the customer corresponding to the image information extracted'**. The examiner is not clear what is happening here given the prior paragraph refers to a database for

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developing a marketing strategy. Is the applicant saying 'the step of obtaining an attribute includes determining from the image data extracted an attribute of the shopper' or 'the step of obtaining an attribute includes determining from the information from the database a link between a customer image and their history of shopping as contained in the database'?

Throughout the specification, the terminology 'block' is used in conjunction with functionally specific technology. Some examples include (paragraph 35 on page 7) 'attribute acquisition block' and 'first determination block'. These specifically are used in the context of a customer information management system. Are these system modules?

Applicant is required to submit an amendment which clarifies the disclosure so that the examiner may make a proper comparison of the invention with the prior art.

Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

A shortened statutory period for reply to this action is set to expire ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this letter.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1-4, 7-12 and 15-36** are rejected under 35 U.S.C. 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding **Claims 1-4, 7-12, 15-23, 35 and 36**, the use of the term '**block**' is used to describe what is apparently a module. However the specification is silent as to what a 'block' is, other than to describe in several contexts (e.g. analysis block, recording block). Thus the specification does not enable the invention because one of ordinary skill in the art would not be able to make or use the invention, because of the unclear definition of the term 'block'.

Regarding **Claims 17 and 24-36**, the use of the term '**image-sensed**' is used to describe what apparently is image information. However this is not clear because this is not a standard term used to describe the capturing of a digital picture or the conversion of an analog picture into a digital one. The specification does not help much either in specifically describing what 'image-sensed' means but uses the term throughout. Thus the specification does not enable the invention because one of ordinary skill in the art would not be able to make or use the invention because of the unclear definition of the term 'image-sensed'.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-36** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding **Claims 1-3, 7-10, 12, 15-19, 21, 22 and 35**, the use of the term '**block**' makes the claim indefinite. Is the claim limitation a computer module? Or is something else being claimed. The claim is indefinite.

Regarding **Claims 1, 5, 6, 7, 9, 13, 15, 18, 22, 23 and 35**, the use of the term '**correlate**' makes the claim indefinite. Correlate implies performing a statistical operation (i.e. correlation). However, the use of the term in the claims seems to mean that the pieces of information or data are not correlated statistically (i.e. defined to a degree of correspondence), but rather actually linked definitively (i.e. deterministically). Therefore the claims are indefinite since the use of the term '**correlate**' implies a degree of correspondence when the rest of the claim implies a definitive link.

Regarding **Claim 8**, the claim cites '**wherein said attribute acquisition block includes a first determination block determining on the basis of said image information extracted said attribute of said customer corresponding to said image information extracted.**' It is not clear what is being claimed. Is an attribute of the customer being extracted from image information? Claim 7 already cites an '**attribute acquisition block**' that obtains a customer attribute.

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The claim is indefinite because the structure and word choice is unclear as to how the claim distinguishes itself from what appears to be identical claim functionality in the independent claim (Claim 7).

Regarding **Claim 14**, the claim cites '**for said customer corresponding to said image information extracted, recording information indicative of a non-purchaser**' while previously having cited '**obtaining image information of a customer having purchased an item**'. It is not clear how the computer-readable medium being claimed can record information indicative of a non-purchasing customer when it has already stated the customer has purchased an item. Therefore the claim is indefinite.

Regarding **Claim 17**, the claim cites '**extracting feature data from image data of a customer image-sensed**'. It is not clear what is being claimed here. The use of the term 'image-sensed' is unclear. Is the claim referring to extracting feature data from image data from a captured image from a customer? The claim is indefinite.

Regarding **Claim 22**, the claim cites '**incrementing by one a frequency of appearance in said shop recorded and corresponding to said image information recorded in the step of recording and found to match said image information obtained**'. Is the claim counting the number of times a shopper is captured on camera and who is in the database as a previous shopper? The use of the term frequency implies a rate (e.g. herz = cycles per second) although the use in the claim as a whole seems to suggest that a simple

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count of the number of times a shopper is captured on camera is tabulated. The claim is indefinite.

Claims 24, 25 and 26 use the term '**image-sensed**' and are therefore rejected under the same rationale as **Claim 17** above.

Claim 27 cites the limitation '**wherein said attribute includes at least one of sex and age**'. The claim is indefinite because while an attribute of age is clear and definite, an attribute of sex is not. Does the applicant mean that the gender of the customer is being determined as an attribute? Or is the meaning of an attribute of sex have something else? The claim is indefinite.

Claim 34 cites the limitation '**said information being added to said attribute of said customer determined**'. Is the information being added to the attribute of a customer? Or is the information being added to an attribute of the customer that has been determined? The claim is indefinite.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1-36** are rejected under 35 U.S.C. 102(b) as being anticipated by Payne US 6,072,894.

Regarding **Claims 1-36**, Payne clearly anticipates the limitations as best understood by the examiner in light of the 112 first and second paragraph rejections above.

Conclusion

Examiner comments: the examiner would very respectfully point out to the applicant that having a clearly written specification and claims not only ensures that an application is properly examined, i.e. terminology and concepts properly searched, but also makes it more likely upon being granted a patent (assuming arguendo the application is patentable), that the disclosure will be cited in the future as background art. Clearly written specifications of patents are more likely to be cited in future searches because they clearly delineate the prior art of an applicant's invention. An examiner in the future is more likely to use a well-written specification as prior art as opposed to a poorly written or unclear specification.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 6237647 by Pong discloses an automatic refueling system that uses cameras and automatic recognition.

US 6437819 by Loveland discloses an automated video tracking system.

US 6529881 by Morgenstein discloses using a biometric audio system for identifying a customer at a point of sale.

US 6850252 by Hoffberg discloses an intelligent electronic appliance.

US 6941274 by Ramachandran discloses an automated transaction machine utilizing video cameras.

US 6026376 by Kenney discloses an interactive shopping system utilizing video cameras.

Seckler, Valerie, "Report from IMRA; if you want to scan your customer's body, she better know why", May 25, 1999, WWD, p.1. Dialog 06374995 54751358.

"Iris Recognition ATM's: a closer look", August 1999, Bank Technology News, Dialog 06549301 55392199.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax

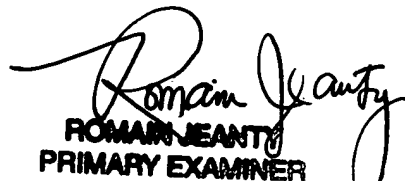
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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JCS

JGS 9-27-2005


ROMAIN JEANTY
PRIMARY EXAMINER
Art Unit 3623